



Fast Track Regulation Agency Background Document

Agency name	Board of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation	18 VAC 85-110
Regulation title	Regulations Governing the Licensed Acupuncturists
Action title	Acceptance of graduates of candidacy status educational programs
Document preparation date	10/10/03

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The proposed action would allow the board to license an applicant who graduated from an acupuncture program that had obtained candidacy status from the accrediting body and subsequently been accredited within three years of the applicant's graduation.

Statement of agency final action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On October 9, 2003, the Board of Medicine took action to amend 18 VAC 85-20-10 et seq., Regulations Governing the Practice of Licensed Acupuncturists, through the fast-track regulatory process to accept graduates of candidacy programs for licensure.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) provides the Board the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- ...*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...*

The authority to establish requirements for licensure of acupuncturists is found in:

§ 54.1-2956.9. Unlawful to practice acupuncture without license; unlawful designation as acupuncturist; Board to regulate acupuncturists.

It shall be unlawful for a person to practice or to hold himself out as practicing as an acupuncturist unless he holds a license as such issued by the Board. A person licensed to practice acupuncture, when using the title "acupuncturist," shall include therewith the designation Lic.Ac. or L.Ac.

In addition, it shall be unlawful for any person who is not licensed under this chapter, whose licensure has been suspended or revoked, or whose licensure has lapsed and has not been renewed to use in conjunction with his name the words "licensed acupuncturist" or to otherwise by letters, words, representations, or insignias assert or imply that he is licensed to practice acupuncture.

The Board of Medicine shall prescribe by regulation the qualifications governing the licensure of acupuncturists. Such regulations shall not restrict the practice of this profession to practitioners regulated by the Board on June 30, 1992, to practice the healing arts. The regulations shall at a minimum require that, prior to performing acupuncture, any acupuncturist who is not licensed to practice medicine, osteopathy, chiropractic or podiatry shall either (i) obtain written documentation that the patient had received a diagnostic examination from a licensed practitioner of medicine, osteopathy, chiropractic or podiatry with regard to the ailment or condition to be treated or (ii) provide to the patient a written recommendation for such a diagnostic examination. The regulations may include requirements for approved education programs, experience, and examinations. The regulations shall exempt from the requirement for Test of Spoken English (TSE) or the Test of English as a Foreign Language (TOEFL) any foreign speaking acupuncturist who speaks the language of the majority of his clients.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

This regulatory change eliminates a barrier to licensure for a small number of individuals who may become licensed acupuncturists, thereby increasing access to acupuncture services in the Commonwealth. The Board is aware of persons who graduated from programs that were in candidacy status by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) at the time of their graduation who would like to practice acupuncture in Virginia but cannot be qualified for licensure. Since this is an emerging profession in the United States, there are new programs being started, including one in Northern Virginia. Graduates of those programs that have obtained candidacy status, most of whom have already been licensed in another state, could not be licensed in Virginia. The Board proposes to address this problem while continuing to require qualifications sufficiently rigorous to protect the public health and safety.

Rationale for using fast track process

Please explain why the fast track process is being used to promulgate this regulation.

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from (1) 10 or more persons, (2) any member of the applicable standing committee of either house of the General Assembly or (3) any member of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

This change has the support of the acupuncture community through the Acupuncture Society of Virginia and the Advisory Board on Acupuncture. There does not appear to be any objection to

the proposal, so the Board would like to expedite the process and enable the licensure of applicants who might be otherwise qualified to practice.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

18VAC85-110-50. Educational requirements: graduates of approved institutions or programs in the United States. This section is amended to allow an applicant from an acupuncture program in a school or college that has achieved candidacy status for accreditation by ACAOM to be eligible for licensure provided the program has subsequently been accreditation within three years of the applicant's graduation.

18VAC85-110-60. Requirements of foreign graduates of ~~non-approved~~ non-accredited educational programs in acupuncture. This section is amended to clarify that it applies to non-accredited educational programs outside the United States or Canada.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

There are no disadvantages to the public of this amendment. The consumer of acupuncture services is adequately protected by licensure of individuals who are graduates of candidacy programs, provided their schools subsequently obtain accreditation. The quality of the educational program is likely to be high at the time a school is under scrutiny by an accrediting body. All applicants for licensure must pass the national certification examination in acupuncture.

There are no disadvantages to the agency or the Commonwealth; the proposed regulation may allow the Board to license a few additional applicants in acupuncture, and a clearly stated regulation on non-accredited programs outside the United States should enable staff of the Board to more clearly explain the rule.

There are no other pertinent matters of interest.

Economic impact

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>The agency will incur some one-time costs (less than \$2,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings. There are no ongoing expenditures related to this amendment. As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.</p>
<p>Projected cost of the regulation on localities</p>	<p>None</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>Applicants for licensure as acupuncturists are affected by the regulation.</p>
<p>Agency’s best estimate of the number of such entities that will be affected</p>	<p>There were 33 acupuncturists licensed in Virginia in FY '01 and 47 in FY '02. The number of applicants from candidacy programs would be expected to be five or less per year.</p>
<p>Projected cost of the regulation for affected individuals, businesses, or other entities</p>	<p>There is no projected cost. The proposed regulation will allow some applicants who were previously unqualified to become licensed, which could increase the availability of acupuncture services in the state.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The proposed language recommended by the Advisory Board on Acupuncture authorized licensure for graduates of candidacy programs if the program had not been subsequently denied accreditation by the ACAOM. The Legislative Committee discussed the recommendations and expressed concern about the validity of the accrediting body, the rigor involved with receiving candidacy status, the length of time a candidacy program has to become accredited, and whether any programs subsequently fail to become accredited. The following information was provided to the full board at its meeting in October:

- The Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) is the accreditation body recognized by Board regulations for licensed acupuncturists. It is the sole accrediting agency recognized by the U. S. Department of Education to accredit professional programs in acupuncture. ACAOM has recently been reviewed by DOE and received another 5-year accreditation.
- An acupuncture program can only achieve candidacy status after it has successfully completed the eligibility process and shown that it is ready to achieve accreditation. The review process prior to awarding candidacy status is rigorous and involves both a written

report and a three-day onsite visit by a team of educators and practitioners. A program can only achieve candidacy after the first entering class has completed at least one full year of the program & can not apply for accreditation until after graduating at least one class of students.

- There are currently 41 accredited programs in the United States and 11 programs in candidacy status.
- A program is given three years from the time it is granted candidacy to achieve accreditation. The ACAOM can grant a request for extension of time for good cause.
- Approximately half of programs are rejected for candidacy status, and only one candidacy program has failed to achieve accreditation in the past eight years.
- All other states (other than Virginia) that use ACAOM accreditation as criteria for licensure recognize candidacy status and license those graduates.
- All applicants must pass the NCCAOM certification examination. NCCAOM recognizes graduation from a candidate program as meeting the qualification to sit for the NCCAOM exam.

Upon receipt of additional information, the Board determined that candidacy status programs exhibited sufficient academic rigor; and that, coupled with passage of the certification examination, provided assurance of minimal competency for licensure. The Board had continued concern about licensing an individual whose program would subsequently fail to achieve accreditation, so the proposal from the Advisory Board was modified to license persons from candidacy schools only after the acupuncture program had been accredited. In addition, the proposed regulations require that the program become accredited within three years of the applicant’s graduation.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

There is no impact on the institution of the family and family stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Current requirement	Proposed change and rationale
50	The current regulation requires graduation from	The proposed change would allow licensure of an applicant from an acupuncture program in a school or

<p>60</p>	<p>an educational program accredited by the ACAOM.</p> <p>This section currently sets out requirements for applicants who completed an educational course of study that is not accredited by ACAOM.</p>	<p>college that has achieved candidacy status for accreditation by ACAOM provided the program has subsequently been accreditation within three years of the applicant’s graduation.</p> <p>Under the current regulations, graduates of programs with candidacy status could never become licensed in Virginia, even if they had passed the certification examination, been licensed in another state, and practiced successfully for a number of years. The proposed change will make most such applicants eligible for licensure and eliminate a barrier that exists for practice in Virginia.</p> <p>The proposed change would clarify that the credentialing process set in this section is applicable only to graduates of non-accredited programs <u>outside the U. S. and Canada</u>. Credentialing evaluation services do not review and approve the education and training of unaccredited programs in the U. S.</p>
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